

## **501 CMR: EXECUTIVE OFFICE OF PUBLIC SAFETY & SECURITY**

### **501 CMR 14:00: TESTING, CERTIFICATION, MARKING, AND ENFORCEMENT OF MASSACHUSETTS' FIRE SAFE CIGARETTES**

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#### **14.01 Purpose**

The purpose of 501 CMR 14.00 is to establish rules and regulations governing the testing, certification, marking, and enforcement of Massachusetts' fire safe cigarettes.

#### **14.02 Statutory Authorization**

501 CMR 14.00 is promulgated pursuant to G.L. c. 64C § 2A-2F inclusive, authorizing the Secretary of Public Safety to promulgate regulations governing the testing, certification, marking, and enforcement of Massachusetts' fire safe cigarettes.

#### **14.03 Definitions**

For purposes of 501 CMR 14.00, the following words shall have the meanings respectively assigned to them:

“Agent”, any person authorized by the commonwealth to purchase and affix tax stamps on packages of cigarettes.

“ASTM”, the American Society of Testing and Materials.

“Cigarette”, any roll for smoking whether made wholly or in part of tobacco or any other substance, regardless of size or shape and whether or not such tobacco or substance is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco, and that, because of its

size, appearance, the type of tobacco used in its filler, or its packaging or labeling, is likely to be offered to, or purchased by, consumers as a cigarette or cigarette equivalent.

“Commissioner”, the Commissioner of the Department of Public Health.

“Secretary”, the secretary of the executive office of public safety and security.

“Manufacturer”: (1) any entity which manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that such manufacturer intends to be sold in the commonwealth, including cigarettes intended to be sold in the United States through an importer;

(2) the first purchaser anywhere that intends to resell in the United States cigarettes manufactured anywhere that the original manufacturer or maker does not intend to be sold in the United States; or

(3) any entity that becomes a successor of an entity described in clause (1) or clause (2) of this definition.

“Repeatability”, the range of values within which the repeat results of cigarette test trials from a single laboratory will fall 95 per cent of the time.

“Retail dealer”, any person other than a manufacturer or wholesale dealer engaged in selling cigarettes or tobacco products.

“Sale”, any transfer of title or possession or both, exchange or barter, conditional or otherwise, in any manner or by any means whatever or any agreement thereof. In addition to cash and credit sales, the giving of cigarettes as samples, prizes or gifts, and the exchanging of cigarettes for any consideration other than money shall be considered a sale.

“Sell”, to sell, or to offer or agree to sell.

“Quality control and quality assurance program”, the laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors or equipment-related problems do not affect the results of testing and that the testing repeatability remains within the required repeatability values stated in clause (5) of subsection (a) of section 2B for all test trials used to certify cigarettes in accordance with section 2C of Chapter 64C.

“Wholesale dealer”, any person who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale, and any person who owns, operates or maintains 1 or more cigarette or tobacco product vending machines in, at or upon premises owned or occupied by any other person or entity.

#### 14.04 General Requirements

(A) Effective January 1, 2008, no person shall sell, offer for sale, or possess for sale in the Commonwealth, cigarettes that are not in compliance with the following requirements, as provided for in Sections 2A-2F inclusive of Chapter 64C of the General Laws:

1. Cigarettes shall be tested by the manufacturer in accordance with the method described in section 2B of Chapter 64C.
2. Cigarettes shall meet the performance standard specified in section 2B of Chapter 64C.
3. A written certification shall be filed by the manufacturer with the Secretary in accordance with the requirements of section 2C of Chapter 64C.
4. Cigarettes shall meet the marking requirements of section 2D of Chapter 64C.

#### 14.05 Testing

A) No cigarette may be sold or offered for sale in the Commonwealth or offered for sale or sold to persons located in the Commonwealth unless the cigarettes have been tested in accordance with, and meet the performance standard of section 2B of Chapter 64C.

B) Each cigarette listed in a certification to the Secretary, which uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard shall have no less than 2 nominally identical bands on the paper surrounding the tobacco column. The position of these bands on said cigarettes shall conform to the requirements of section 2B of Chapter 64C.

C) If the Secretary shall determine, in his sole discretion, that a cigarette cannot be tested in accordance with the provisions of Section 2B of Chapter 64C, the manufacturer shall propose a test method to the Secretary who shall determine in consultation with the Commissioner, whether said standard is equivalent to the prescribed standard. If the proposed standard is approved by the Secretary, the manufacturer may employ such method to certify its cigarettes in conformance with section 2B of Chapter 64C. All other applicable requirements of sections 2A-2F inclusive of Chapter 64C shall apply. All records of such test results and performance standards shall be kept by the manufacturer for 3 years and shall be sent upon request to the Secretary and the Attorney General of the Commonwealth.

D) The Secretary may adopt a subsequent ASTM standard or another state's cigarette test method, providing:

The subsequent method does not result in a decrease in the percentage of full-length burns when compared to the same cigarette tested in accordance with ASTM Standard E2187-04.

14.06            Certification

- A) Each manufacturer shall submit to the secretary a written certification attesting that each cigarette listed in said certification has complied with the certification requirements of section 2C of Chapter 64C.
- B) Each cigarette certified in accordance with the provisions of section 2C of Chapter 64C shall be recertified every 3 years.
- C) A fee of \$3,000 shall be paid by the manufacturer to Secretary for each cigarette listed in the manufacturers certification. The Secretary may, as he determines, adjust the certification fee to provide for processing, testing, enforcement, and oversight of activities related to sections 2B to 2F, inclusive, of Chapter 64C.

14.07            Marking

- A) All cigarettes certified as in compliance with section 2B of Chapter 64C, shall be marked in accordance with the provisions of section 2D of said Chapter 64C.
- B) The manufacturer shall use only 1 mark applied uniformly to all cigarette packages including not limited to: packs, cartons, and cases of all brands marketed by the manufacturer.
- C) Prior to the certification of any cigarette, the manufacturer shall present its proposed marking to the Secretary who shall approve or disapprove the marking offered within 10 days or said marking shall be deemed approved. Marks approved for use in New York State shall be accepted. No manufacturer shall modify its mark without prior notice to the Secretary.

14.08            Application Process

- A) Each manufacturer shall submit to the Secretary's designee:

The Massachusetts Office of Safe Cigarette Certification  
c/o The Massachusetts Department of Fire Services  
P.O. Box 1025 ~ State Road  
Stow, Massachusetts 01775;

- 1) An application for approval consisting of a written certification attesting that each cigarette listed has been tested in accordance with Section 2B of Chapter 64C and has complied with the performance standard as required;
  - 2) All certification information required pursuant to Section 2C of Chapter 64C, and;
  - 3) All proposed markings as required by Section 2D of said Chapter 64C.
- B) A fee of \$3,000 per cigarette listed in the application, shall be submitted and made payable to: The Commonwealth of Massachusetts / Cigarette Fire Safety Fund.
- C) Each cigarette certified pursuant to Section 2C of Chapter 64C shall be re-certified every 3 years in accordance with the process contained herein.
- D) Proof of certification shall be kept by the manufacturer and made available to the Secretary and Attorney General of the Commonwealth as required. Copies of certifications and marking illustrations shall be provided by the manufacturer to all wholesale dealers or agents selling the manufacturer's cigarettes.

#### 14.09 Penalties

##### (A)(1) Manufacturers, Wholesalers, Dealers, Agents

Any manufacturer or other person or entity that knowingly sells or offers to sell cigarettes in violation of the requirements provided for in sections 2A-2F inclusive, of Chapter 64C of the General Laws, is subject to a civil penalty not to exceed \$10,000 for a first violation and up to \$25,000 for a second or subsequent violation.

##### (B)(1) Manufacturers

Any manufacturer that knowingly makes a false certification pursuant to Section 2C of Chapter 64C, shall be subject to a civil penalty of \$10,000 for a first violation and up to \$25,000 for a second or subsequent violation.

##### (C)(1) Retail Dealers

Any retail dealer who knowingly sells cigarettes in violation of Section 2B of Chapter 64C shall be subject to the following civil penalties:

- a) \$500 for a first violation and \$2,000 for a second or subsequent violation for each sale of cigarettes, if the number of cigarettes sold does not exceed 1,000 cigarettes.

- b) \$1,000 for a first violation and \$5,000 for a second or subsequent violation for each sale of cigarettes if the transaction is 1,000 cigarettes or more.

14.10 Inspection Authority

(A) Inspections may be made at any place where cigarettes are sold, offered for sale, stored or at any site where there is evidence of a violation of the requirements of Sections 2A-2F inclusive, of Chapter 64C.

(B) Wholesale dealers, agents, and retail dealers shall permit an employee or agent of the Secretary, including compliance officers of the Department of Fire Services, upon presentation of appropriate identification and credentials, to enter, and to conduct an inspection of any building, facility, site or other place as described in subdivision (a).

14.11 Seizure Authority

(A) Upon discovery by the Secretary, including compliance officers of the Department of Fire Services, or his employees including agents, or any law enforcement agency, that any person offers or possesses for sale, or has made a sale of cigarettes in violation of Sections 2A-2F inclusive, of Chapter 64C, the Secretary, including compliance officers of the Department of Fire Services, his employees, agents or any law enforcement authority may seize those cigarettes possessed in violation of this part and notify the Secretary forthwith. The Secretary may order such cigarettes to be disposed of as contraband.